Supreme Court of the United States.

No. 166.—October Term, 1904.

Walter S. McMichael, Lillian M. Harris, Lulu F. McGee, et al., Plaintiffs in Error and Appellants, vs. Samuel Murphy, Louisa Murphy, his wife; Ferdinand Batchelder, et al.	In error to and appeal from the Supreme Court of the Territory of Oklahoma.

[April 3d 1905.]

Mr. Justice Harlan delivered the opinion of the Court.

The facts in this case may be summarized as follows:

On April 23d, April 24th and May 1st 1889 White, Blanchard and Cook, respectively and in the order named, applied, at the United States Land Office in Guthrie, Oklahoma Territory, to make a homestead entry on certain lands, being part of the Southwest ¼ of Section 27, Township 12, north of range 3 west. The applications of Blanchard and Cook were each rejected, as being in conflict with White's entry. On April the 27th 1889 Blanchard filed his affidavit of contest, charging that White entered the Territory prior to twelve o'clock noon of April the 22d 1889, in violation of the act of Congress approved March 2d 1889, 25 *Stat.* 1004, c. 412, and the President's proclamation issued under that act. 26 *Stat.* 1544. On May 1st ~~1889~~ Cook also filed an affidavit of contest against White, alleging the latter's disqualification, as above stated, to enter the land, and also that Blanchard was also disqualified upon the same grounds as those alleged in reference to White.

The contest having been tried before the local land office—each party charging that the other two had entered the Territory prior to noon of April 22d 1889—the Register and Receiver recommended the cancellation of White's entry, and dismissed the contest of both Blanchard and Cook. From this decision all parties appealed to the Commissioner of the General Land Office, and on March 7th 1890 the decision of the local office was affirmed. An appeal was then taken to the Secretary of the Interior. While the case was pending before that officer, namely, on November 29th 1890, White of record relinquished his entry, and Murphy, the defendant, on the same day, entered the land. The Secretary of the Interior, July 21st 1891, affirmed the decision of the Commissioner of the General Land Office. *Blanchard* v. *White*, 13 *L. D.* 66.

On or about June 3d 1889, White's homestead entry *being still intact, of record*, McMichael entered upo the land with a view of establishing

his residence thereon and initiating a homestead right to it; and on July 21st 1889 he made application to the local office to enter the land, tendering the required fees; but his application was rejected by the local office as being in conflict with White's entry. From that order no appeal was taken.

On August 31st 1889 McMichael again tendered his application to the local office with the required fees. That application was received, but it was suspended pending the contest of White, Blanchard and Cook. On the day last named McMichael filed a contest or protest, alleging that he had made settlement on the land on June 3d 1889, had lived there in a tent with his family until August 2d 1889, when, at the instance of White, he was forcibly removed therefrom by the military authorities; that his rights were superior to those of White, Blanchard and Cook, all of whom, he alleged, were disqualified by reason of having entered the Territory during the period prohibited by law; that his application of June 3d was rejected because it conflicted with White's interests, although he was the only qualified settler on the tract entitled to make entry. The case, as between McMichael and Murphy, having been heard on February 15th 1892 a decision was rendered in favor of the latter. Thereupon McMichael appealed to the General Land Office which, on January 18th 1893, affirmed the decision of the local office. He then appealed to the Secretary of the Interior, and that officer, on February 25th 1895, affirmed the decision of the Land Office. *McMichael* v. *Murphy*, 20 *L. D.* 147.

A patent was issued to Murphy for the land; whereupon the present action was brought in the District Court of Oklahoma County by McMichael against Murphy and his grantees, the relief asked being a decree declaring the legal title to be held in trust for the use and benefit of McMichael. Murphy demurred on the ground that the petition did not state facts sufficient to constitute a cause of action—McMichael's claim being that the Secretary of the Interior had misconstrued and misapplied the law. The demurrer was sustained, and the plaintiff having elected to stand on his petition the court dismissed the case. From that decree the plaintiff brings the case here for review.

After the cause was entered in the Supreme Court of the Territory McMichael died and the cause was revived in the name of his heirs.

The particular question involved in this case is whether a settlement or entry on public land already covered of record by another entry, valid upon its face, gives the second entryman any right in the land, notwithstanding the first entry may subsequently be relinquished or be ascertained to be invalid by reason of facts dehors the record of such entry.

By virtue of the authority vested in him by acts of Congress, particularly by the Indian Appropriation act of March 2d 1889, 25 *Stat.* 1004,

c. 412, the President by Proclamation dated March 23d 1889 declared that certain lands theretofore obtained from Indians (among which were those in dispute) would "at and after the hour of twelve o'clock, noon, of April 22d 1889, and not before, be open for settlement, under the terms of, and subject to, all the conditions, limitations and restrictions" contained in the above act and in the laws of the United States applicable thereto. 26 *Stat.* 1544. That Proclamation contains the following clause: "Warning is hereby again expressly given, that no person entering upon and occupying said lands before said hour of twelve o'clock, noon, of the twenty-second day of April, A. D. eighteen hundred and eighty-nine, hereinbefore fixed, will ever be permitted to enter any of said lands or acquire any rights thereto; and that the officers of the United States will be required to strictly enforce the provision of the act of Congress to the above effect." 26 *Stat.* 1544–6.

It may be assumed, for the purpose of this case, that White entered the Territory and occupied the land before noon of April 22d 1889 in violation of the act of Congress and the Proclamation of the President. But his entry did not, on its face or in the papers connected therewith, disclose the fact of his personal disqualification to make a valid entry. While the entry remained uncancelled of record by any direct action of the Land Office or by relinquishment, could another person, by making an entry, acquire a right in the land upon which a patent could be based? If not, then McMichael acquired no right by his entry or application to enter.

The Supreme Court of the Territory held that White's homestead entry was *prima facie* valid, and that so long as White's entry remained uncancelled of record it segregated the tract of land from the mass of the public domain and precluded McMichael from acquiring an inceptive right thereto by virtue of his alleged settlement.

We are of opinion that there was no error in this ruling. It is supported by the adjudged cases. *Kansas Pacific Ry. Co.* v. *Dunmeyer*, 113 *U. S.* 629; *Hastings &c. R. R.* v. *Whitney*, 132 *U. S.* 357, 361–2; *Sioux City &c. Land Company*, 143 *U. S.* 32, 38; *Whitney* v. *Taylor*, 158 *U. S.* 85, 91–94; *Northern Pacific Railroad Co.* v. *Sanders*, 166 *U. S.* 620, 631–2; *Northern Pacific Railway* v. *De Lacey*, 174 *U. S.* 622, 634–5; and *Hodges* v. *Colcord*, 193 *U. S.* 192, 194–6.

In the last named case the question now before us was directly presented and decided. It was there alleged that one Gayman, who had made a homestead entry, was disqualified by reason of his having entered the Territory of Oklahoma in violation of the above act of Congress and the Proclamation of the President. The court said: "Gayman's homestead entry was *prima facie* valid. There was nothing on the face of the record to show that he had entered the territory prior to the time fixed for the opening thereof for settlement, or that he had in any manner violated the statute or the

proclamation of the President. This *prima facie* valid entry removed the land, temporarily at least, out of the public domain, and beyond the reach of other homestead entries. . . Generally, a homestead entry while it remains uncancelled withdraws the land from subsequent entry. Such has been the ruling of the Land Department. . . The entry of Gayman, though ineffectual to vest any rights in him, and, therefore, void as to him, was such an entry as prevented the acquisition of homestead rights by another until it had been set aside."

Following the adjudged cases, we hold that White's original entry was *prima facie* valid, that is, valid on the face of the record, and McMichael's entry, having been made at a time when White's entry remained uncancelled, or not relinquished, of record, conferred no right upon him, for the reason that White's entry, so long as it remained undisturbed, of record, had the effect to segregate the lands from the public domain and make them not subject to entry. Upon White's relinquishment they again became public lands, subject to the entry made by Murphy.

In addition, it may be observed that the action of the Land Department under the statutes relating to the public lands has been in line with the above views. This appears from the decision in *Hodges* v. *Colcord*, and from the opinion of the Secretary of the Interior in *McMichael* v. *Murphy*, 20 *L. D.* 147. It is our duty not to overrule the construction of a statute upon which the Land Department has uniformly proceeded, in its administration of the public lands, except for cogent reasons. *United States* v. *Johnston*, 124 *U. S.* 236; *United States* v. *Alabama G. S. R. Co.*, 142 *U. S.* 615; *United States* v. *Philbrick*, 120 *U. S.* 169; *United States* v. *Healey*, 160 *U. S.* 138, 141.

The judgment is *Affirmed.*

True copy.

Test:

Clerk Supreme Court, U. S.